



This document is scheduled to be published in the Federal Register on 02/17/2015 and available online at <http://federalregister.gov/a/2015-03037>, and on FDsys.gov

Billing Code 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR-5827-F-01]

Removal of Obsolete Section 8 Rental Assistance Certificate Program Regulations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule removes from regulations obsolete references to the Section 8 Tenant-Based Rental Assistance Certificate program (Certificate Program). In accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” HUD reviewed its regulations to identify regulations that are “outmoded, ineffective, insufficient or excessively burdensome.” Following its review, HUD determined that the Certificate Program regulations are obsolete and unnecessary because they govern a program that has been consolidated into another program, the Housing Choice Voucher (HCV) program. This rule also makes minor editorial corrections to the regulations.

DATES: Effective date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: For questions, please contact Jennifer Lavorel at 202-402-2515 (the number is not toll-free). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339. She may also be reached via postal mail at the following address: Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC, 20410.

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2011, President Obama issued Executive Order 13563, “Improving Regulation and Regulatory Review.”¹ The Executive Order directs heads of Federal departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. As a part of HUD’s overall effort to reduce regulatory burden and streamline the content of title 24 of the Code of Federal Regulations (CFR), this rule removes obsolete references to the Certificate Program, which has long been merged with the HCV program.

In the HCV program (and also formerly in the Certificate Program), HUD pays rental subsidies so eligible families can afford decent, safe, and sanitary housing. HUD provides housing assistance funds to public housing agencies (PHAs) that administer the program. Eligible families select and rent units that meet program housing quality standards. The PHA contracts with the owner of the housing to make rent subsidy payments on behalf of the family.

The Certificate Program was first created by the Housing and Community Development Act of 1974,² which amended section 8 of the United States Housing Act of 1937 (1937 Act).³ Building on the success of the Certificate Program, Congress authorized a new rental voucher demonstration program in 1984, by adding a new section 8(o) to the 1937 Act, as part of the Supplemental Appropriations Act, 1984.⁴ The rental voucher program was similar to the Certificate Program but provided families with more options in housing selection. The rental

¹ The Executive Order was subsequently published in the Federal Register on January 21, 2011, at 76 FR 3821.

² Public Law 93-383, approved August 22, 1974.

³ 42 U.S.C. 1437f.

⁴ Public Law 98-181, approved November 30, 1983.

voucher program was made permanent by the Housing and Community Development Act of 1987.⁵

HUD published a series of regulatory changes in the 1990s to align the two programs as closely as possible, given the statutory framework of each program. The Quality Housing and Work Responsibility Act of 1998 (QHWRA)⁶ amended section 8 of the 1937 Act to fully merge the Certificate and rental voucher programs and eliminated all differences between the two. On May 14, 1999,⁷ HUD published an interim rule implementing the merger of the two programs into the new HCV program. The interim rule was followed by publication of an October 21, 1999, final rule.⁸ In accordance with the regulations implementing the merger, the Certificate Program was phased out by October 2001.

The removal of obsolete references to the Certificate Program from 24 CFR will eliminate any misunderstanding that the Certificate Program is an active program. No new assistance is being provided under this program. To the extent that any Project-Based Certificate Program contracts remain in effect, they are now governed by the regulations in 24 CFR 983.10, entitled “Project-based certificate (PBC) program”.

In addition to eliminating obsolete regulatory provisions in 24 CFR part, this rule makes certain minor editorial corrections to the regulations in 24 CFR part 982. For example, in certain places, the regulations refer to PHAs as PHAs but in other places the regulations refer to PHAs as housing authorities or HAs. HUD revised the regulations to consistently use the terms PHA or PHAs throughout. Similarly, the rule revises the part 982 regulations to refer to the tenant-based voucher program as the HCV program.

⁵ Public Law 100-242, approved February 5, 1988.

⁶ Title V of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105-276, approved October 21, 1998).

⁷ 64 FR 26632.

⁸ 64 FR 56894.

II. Justification for Final Rulemaking

In accordance with 24 CFR part 10, it is the practice of HUD to offer interested parties the opportunity to comment on proposed regulations. Part 10, consistent with 5 U.S.C. 553(b), provides for exceptions to the general rule if an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” (See 24 CFR 10.1.)

The removal of these regulations from 24 CFR does not establish or affect substantive policy. This final rule removes obsolete and unnecessary regulatory provisions for a program that is no longer being funded and makes non-substantive editorial corrections. Therefore, HUD finds that public notice and comment are unnecessary and contrary to the public interest.

III. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

If a budgetary impact statement is required, section 205 of UMRA (2 U.S.C. 1534) also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking. As discussed above, HUD has determined, for good cause, that prior notice and public comment is not required on this rule and, therefore, the UMRA does not apply to this final rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects in 24 CFR Part 982

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, and pursuant to the Secretary's authority under 42 U.S.C. 3535(d), 24 CFR part 982 is amended as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. Revise § 982.1(a) to read as follows:

§ 982.1 Programs: purpose and structure.

(a) General description. (1) In the HUD Housing Choice Voucher (HCV) program, HUD pays rental subsidies so eligible families can afford decent, safe, and sanitary housing. The HCV program is generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the program.

(2) Families select and rent units that meet program housing quality standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments on behalf of the family. A PHA may not approve a tenancy unless the rent is reasonable.

(3) Subsidy in the HCV program is based on a local “payment standard” that reflects the cost to lease a unit in the local housing market. If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent.

* * * * *

3. Revise § 982.2 to read as follows:

§ 982.2 Applicability.

Part 982 contains the program requirements for the tenant-based housing assistance program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based program is the HCV program.

4. Amend § 982.4 as follows:

a. Revise paragraph (a)(2); and

b. In paragraph (b), remove the definition of “Tenant rent” and revise the definitions of “Absorption”, “Administrative plan”, “Admission”, “Applicant”, “Budget authority”, “Continuously assisted”, “Housing quality standards (HQS)”, “Merger date”, “Program”, “Receiving PHA”, and “Utility reimbursement”.

The revisions read as follows:

§ 982.4 Definitions.

(a) * * *

(2) Definitions concerning family income and rent. The terms “adjusted income,” “annual income,” “extremely low income family,” “tenant rent,” “total tenant payment,” “utility

allowance,” “utility reimbursement,” and “welfare assistance” are defined in part 5, subpart F of this title. The definitions of “tenant rent” and “utility reimbursement” in part 5, subpart F of this title do not apply to the HCV program under part 982.

(b) * * *

Absorption. In portability (under subpart H of this part): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

* * * * *

Administrative plan. The plan that describes PHA policies for administration of the HCV program. See § 982.54.

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in the tenant-based program.

Applicant (applicant family). A family that has applied for admission to the HCV program but is not yet a program participant.

Budget authority. An amount authorized and appropriated by the Congress for payment to PHAs under the HCV program. For each funding increment in the program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

* * * * *

Continuously assisted. An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Act program when the family is admitted to the HCV program.

* * * *

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the HCV program. See § 982.401.

* * * *

Merger date. October 1, 1999, which is the effective date of the merger of the two tenant-based programs (the housing voucher and housing certificate programs) into the Housing Choice Voucher (HCV) program.

* * * *

Program. The Section 8 HCV program under this part.

* * * *

Receiving PHA. In portability: A PHA that receives a family selected for participation in the HCV program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

* * * *

Utility reimbursement. The portion of the housing assistance payment which exceeds the amount of the rent to owner. (See § 982.514(b)).

* * * *

5. In § 982.51(b), revise the second sentence to read as follows:

§ 982.51 PHA authority to administer program.

* * * *

(b) * * * The PHA must submit additional evidence when there is a change that affects its status as a PHA, its authority to administer the program, or its jurisdiction.

§ 982.53 [Amended]

6. In § 982.53(e), remove the phrase “incidents of” and add in its place “an incidence of”.

§ 982.54 [Amended]

7. In § 982.54, remove paragraph (d)(19) and redesignate paragraphs (d)(20) through (23) as paragraphs (d)(19) through (22), respectively.

§ 982.101 [Amended]

8. In § 982.101(c), remove the word “HAs” and add in its place “PHAs” and remove the parenthetical “(NOFA)” and add in its place “(NOFAs)”.

§ 982.102 [Amended]

9. Amend § 982.102 as follows:

a. In paragraph (a), remove the phrase “part 983 of this title” and add in its place “24 CFR part 983” and remove the “,” at the end of the paragraph and add a “.” in its place;

b. In paragraph (e)(1)(i), remove the words “PHA certificate and voucher programs (including project-based assistance under such programs)” and add, in their place, the words “HCV program (including project-based assistance under such program)”;

c. Redesignate the second paragraph (e)(3)(iii) as paragraph (e)(3)(iv); and

d. In paragraph (f), capitalize the word “consolidated” in the paragraph heading.

§ 982.103 [Amended]

10. In § 982.103(a), capitalize the word “a” at the beginning of the paragraph.

§ 982.151 [Amended]

11. In § 982.151(a)(2), remove the words “PHA tenant-based assistance program” and add in their place “PHA’s HCV program”.

§ 982.152 [Amended]

12. Amend § 982.152 as follows:

- a. In paragraph (a), remove all references to “HA” and add in their place “PHA”; and
- b. In paragraph (b)(2), remove the phrase “tenant-based” and add in its place “HCV”.

§ 982.158 [Amended]

13. In § 982.158(c), remove the word “tPHAt” and add in its place “that”.

§ 982.161 [Amended]

14. In § 982.161(a), remove the phrase “tenant-based programs” and add in its place “HCV program”.

15. Amend § 982.201 as follows:

- a. In the paragraph heading of paragraph (a), add the word “In” before the word “general”;
- b. In paragraph (b)(2)(i), remove the phrase “tenant-based voucher” and add in its place “HCV”;

c. Remove paragraph (b)(2)(iv) and redesignate paragraphs (b)(2)(v) through (vii) as paragraphs (b)(2)(iv) through (vi), respectively;

d. In newly redesignated paragraph (b)(2)(v), remove the phrase “tenant-based voucher” and add in its place “HCV”; and

e. Revise newly redesignated paragraph (b)(2)(vi) and paragraph (b)(3).

The revisions read as follows:

§ 982.201 Eligibility and targeting.

* * * * *

(b) * * *

(2) * * *

(vi) If a family initially leases a unit outside the PHA jurisdiction under portability procedures at admission to the HCV program, such admission shall be counted against the targeting obligation of the initial PHA (unless the receiving PHA absorbs the portable family into the receiving PHA’s HCV program from the point of admission).

(3) The annual income (gross income) of an applicant family is used both for determination of income-eligibility under paragraph (b)(1) of this section and for targeting under paragraph (b)(2)(i) of this section. In determining annual income of an applicant family that includes a person with disabilities, the determination must include the disallowance of increase in annual income as provided in 24 CFR 5.617, if applicable.

* * * * *

§ 982.205 [Amended]

16. In § 982.205(a)(1), capitalize the word “a” in the first sentence following the paragraph heading.

17. Add § 982.305(b)(1)(iii) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(b) * * *

(1) * * *

(iii) The PHA has approved leasing of the unit in accordance with program requirements.

* * * * *

§ 982.311 [Amended]

18. In § 982.311(b), remove the word “HA” and add in its place “PHA”.

§ 982.315 [Amended]

19. In § 982.315(b)(3), remove the words “or actual” and add in their place “of actual”.

20. Amend § 982.355 as follows:

a. In paragraph (a), remove the phrase “a tenant-based” and add in its place “an HCV”;

b. Revise paragraph (c)(1);

c. In paragraph (d)(1), remove the phrase “PHA voucher” and add in its place “PHA’s HCV” and remove the phrase “PHA tenant-based” and add in its place “PHA’s HCV”;

d. In paragraph (e)(6), capitalize the word “a” at the beginning of the paragraph and remove the phrase “PHA tenant-based” and add in its place “PHA’s HCV”; and

e. In paragraph (e)(7), remove the phrase “tenant-based” and add in its place “HCV”.

The revision reads as follows:

§ 982.355 Portability: Administration by receiving PHA.

* * * * *

(c) * * *

(1) The receiving PHA does not redetermine eligibility for a portable family that was already receiving assistance in the initial PHA’s HCV program. However, for a portable family that was not already receiving assistance in the PHA’s HCV program, the initial PHA must determine whether the family is eligible for admission to the receiving PHA’s HCV program.

* * * * *

§ 982.401 [Amended]

21. Amend § 982.401 as follows:

a. In paragraph (a)(1), remove the phrase “in the programs” and add in its place “under the HCV program”;

b. In paragraph (c)(1)(ii), add a period after “e.g.”; and

c. In paragraph (n)(1), remove “-” after “hearing-impaired person,”.

§ 982.403 [Amended]

22. In § 982.403, remove paragraph (b) and redesignate paragraph (c) as paragraph (b).

§ 982.406 [Amended]

23. In § 982.406, remove “tPHAn” and add in its place “than”.

§ 982.452 [Amended]

24. In § 982.452(b)(5)(ii), remove the line break between “tenant contribution” and “(the part of rent”.

25. Revise § 982.501 to read as follows:

§ 982.501 Overview.

This subpart describes program requirements concerning the housing assistance payment and rent to owner under the HCV program.

§ 982.502 [Removed]

26. Remove § 982.502.

§ 982.503 [Amended]

27. Amend § 982.503 as follows:

- a. Remove “Voucher tenancy:” from the section heading; and
- b. Remove paragraph (c)(7).

§ 982.504 [Amended]

28. Amend § 982.504 as follows:

- a. Remove “Voucher tenancy:” from the section heading;

b. In paragraph (a) introductory text, remove the phrase “tenant-based assistance under the voucher program” and add in its place “HCV assistance”;

c. In paragraph (a)(1), remove the phrase “tenant-based voucher” and add in its place “HCV” and remove the phrase “§ 401.421 of this title” and add in its place “24 CFR 401.421”;
and

d. In paragraph (a)(2), remove “tenant-based” and add in its place “HCV”.

§ 982.505 [Amended]

29. In § 982.505, remove “Voucher tenancy:” from the section heading.

30. Revise § 982.516(d)(2) to read as follows:

§ 982.516 Family income and composition: Regular and interim examinations.

* * * * *

(d) * * *

(2) At the effective date of a regular or interim reexamination, the PHA must make appropriate adjustments in the housing assistance payment in accordance with § 982.505.

* * * * *

§ 982.517 [Amended]

31. In § 982.517(c)(1), capitalize the word “a” at the beginning of the paragraph and remove the word “PHAs” and add in its place “has”.

§§ 982.518, 982.519, and 982.520 [Removed]

32. Remove §§ 982.518 through 982.520.

§ 982.521 [Amended]

33. Remove § 982.521(c).

§ 982.552 [Amended]

34. In § 982.522(c)(2)(iii), add “may” before “consider whether”.

§ 982.553 [Amended]

35. In § 982.553(a)(2)(ii)(B), remove the phrase “not to have” and add in its place “not have”.

§ 982.555 [Amended]

36. Amend § 982.555 as follows:

a. In paragraph (a), add a space between the paragraph heading and paragraph (a)(1), capitalize the word “a” at the beginning of paragraph (a)(1), remove paragraph (a)(1)(iv), and redesignate paragraphs (a)(1)(v) and (vi) as paragraphs (a)(1)(iv) and (v), respectively; and

b. In paragraphs (b)(4), (5), (6), and (7), capitalize the word “a” at the beginning of each paragraph.

§ 982.601 [Amended]

37. In § 982.601(c)(1), add a period after “e.g”.

§ 982.615 [Amended]

38. In § 982.615(b), remove “HA” and add in its place “PHA”.

39. Revise § 982.619(b)(4) to read as follows:

§ 982.619 Cooperative housing.

* * * * *

(b) * * *

(4) Adjustments are applied to the carrying charge as determined in accordance with this section.

* * * * *

§ 982.623 [Amended]

40. Amend § 982.623 as follows:

- a. Remove paragraph (a);
- b. Remove the heading of paragraph (b).
- c. Redesignate paragraphs (b)(1) through (4) as paragraphs (a) through (d), respectively;
- d. In newly redesignated paragraph (c), further redesignate paragraphs (i) and (ii) as paragraphs (c)(1) and (2), respectively; and
- e. In newly redesignated paragraph (d), further redesignate paragraphs (i) through (iii) as paragraphs (d)(1) through (3), respectively.

§ 982.625 [Amended]

41. In § 982.625(g)(2), add a space between “its” and “Section 8”.

§ 982.627 [Amended]

42. In § 982.627(c)(2)(ii)(A), remove the line break between “voucher” and “program”.

§ 982.631 [Amended]

43. In § 982.631(c)(2)(iii), remove the line break between “unit” and “unless”.

§ 982.636 [Amended]

44. In § 982.636(c), add a period after “e.g”.

§ 982.641 [Amended]

45. In § 982.641(c)(3), in the cross-reference “§ 982.353(b)(1),(2), and (3)”, remove “(b)(1),(2), and (3)”.

Dated: February 9, 2015.

Jemine A. Bryon,
Acting Assistant Secretary for
Public and Indian Housing.

[FR-5827-F-01]

[FR Doc. 2015-03037 Filed 02/13/2015 at 8:45 am; Publication Date: 02/17/2015]